

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23821  
Docket Number MW-23699

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
{ Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Cook Ellis Johnson, Jr. was without just and sufficient cause and on the basis of unproven charges (System File 37-SCL-79-79/12-39 (79-26) J).

(2) Cook Ellis Johnson, Jr. shall be returned to service with seniority and all other rights unimpaired and be compensated for all wage loss suffered."

OPINION OF BOARD: Prior to the occurrence giving rise to the dispute herein, Claimant was employed by the Carrier as a cook, assigned to Timbering Force working in the vicinity of Pearson, Ga., under the supervision of Foreman W. J. Sumner and Assistant Foreman I. L. Walden, having been assigned to that force about two months.

According to the Carrier, the Foreman of the Timbering Gang received numerous complaints from the men in the gang about the quality of the food that was being served. There were two cooks assigned to the force and as the other cook had been with the force longer and there had been no complaints about the meals he had prepared prior to Claimant joining the force, the Foreman instructed the Claimant to assist in the kitchen, to bring the meals to the men in the field, leaving the actual preparation of the meals to the other cook, who was junior in seniority to Claimant. We have been referred to no agreement rule providing who will be a so-called chief cook and a second cook.

On March 8, 1979, Carrier's Division Engineer notified the Claimant:

"Reference is made to Assistant Roadmaster L. E. Wainwright's letter to you dated March 6, 1979, in which you were charged with violation of portion of Operating Rule G, which reads as follows:

'The use of intoxicants, narcotics, sedatives, stimulants or a derivative or combination of any of these, when subject to call, when reporting for duty, while on duty, while on Company property is sufficient cause for dismissal.'

and also Rule No. 16 in the Safety Rule Book, which reads as follows:

'Employees on duty must not use or be under the influence of intoxicants, drugs or anything which may impair senses or alertness.'

Portions of Rule No. 18 in the Safety Rule Book, which reads as follows:

'Vicious or uncivil conduct, insubordination or concealing facts concerning matters under investigation will subject the offender to dismissal.'

In this connection you will be granted a hearing in accordance with the current Working Agreement in my office at 315 Plant Avenue, Waycross, Georgia to begin at 1:30 P.M., Friday, March 16, 1979. You may have representation if you so desire, in accordance with the agreement under which you are employed, and you may arrange to have present any witnesses who have knowledge of this matter.

Your personal record file will be reviewed at this hearing."

The investigation was conducted as scheduled. A copy of the transcript of the investigation, or hearing, has been made a part of the record. Claimant was present throughout the hearing and was represented.

The Foreman testified in the investigation, or hearing, that he told the Assistant Foreman Walden:

"... to tell Johnson that Dixon was going to (be) the cook from there on out cause the men were complaining about his cooking and they were not complaining before he got there. So, I told him that when they went in that afternoon, I went on put out the water and before I started to go home, I called Mr. Walden and asked him was everybody in and everything okay, and he said yes. So when I go to work the next morning, I ask Mr. Walden and he told me that he (claimant) said he was not going to be the flunkie cook that he was the oldest in seniority and that he was not coming out on the line of road and I told Mr. Walden well we'll see. Well, at dinner he did not show up. Dixon came back out on the line of road and Mr. Wainright (Assistant Roadmaster) drove up about that time and I asked him to go with me to the camps to see what was the trouble. We drove up the camps, Johnson told us that he was not going to be the flunkie cook, that he was the oldest man in seniority and that he would call the Union. And before we left from out there, Walden also told us that he was drinking on the camp. And when we got there after we asked him about why he wouldn't come out there, he told us that he was senior man and he was not coming out and we asked him about was he drinking and he said yes he was drinking in his car, which measured

about 24 feet from the camp car. Then we went to the phone at Axon and called you, called Mr. Cooper -

Q. Mr. Sumner, did you personally tell Mr. Johnson the problem that you felt like he was having as a cook.

A. Yes, sir, I told him when me and Mr. Wainright arrived at the camp and he told me then that he was the senior man and he was not going out on line of road that he would call the Union and see what he could get done.

Q. Did you personally instruct him as to what you want him to do?

A. Yes, sir, he told me that the kitchen was not my job, that that was his job and I told him my job exists from one end of the camp cars to the other.

Q. While you and Mr. Wainright was at the camp car and you questioned Mr. Johnson about the drinking and he admitted that he was drinking in his automobile?

A. Yes, sir, he admitted that he was drinking in his automobile.

Q. Did you and Mr. Wainright measure from the automobile to the camp cars?

A. Yes, sir."

Assistant Foreman Walden testified in part:

"... So when I was there at camp that afternoon, Mr. Johnson, I told him what was Mr. Sumner told me to tell him. Mr. Johnson say he was the senior cook, he was the oldest man, and that Mr. Sumner wanted him to come out on the truck the next day. So Mr. Johnson told me that I could take my money and go to the restaurant and eat. So I told him that Mr. Sumner said for him to come out there on the dinner truck to serve dinner. He said he not going to go anywhere, if he go out there his mama is a - , those are the words he told me, and the next day Mr. Johnson did not come out there and I asked Mr. Leonard, the second cook, where was Mr. Johnson. He said he wasn't coming anywhere because he's the oldes man. So that time I told Mr. Sumner about it.

Q. Mr. Walden, was you present on the camp cars on the night of March 5, which would be Monday night?

A. That is correct.

Q. Did you observe or see anything actions or anything that Mr.

Johnson was doing on that night?

- A. Yes, sir, on that same night, I was standing at one end of the camp car, the kitchen, peeping out looking out. Mr. Johnson and two more other men, they weren't no Railroad employees. He was sitting on the step with one leg crossed like I got mine now, half bottle in his hand with a, in a bag, half way fold down. It was a whiskey bottle. He was drinking out of it. And I showed Mr. Leonard Beecham to him."

The Assistant Roadmaster (Mr. Wainright) in answer to a question from the General Chairman, stated:

- "Q. Do you have any specifics as far as the insubordination. What did he actually do that you feel that he was being insubordinate?

- A. Well, not following the instructions that the Foreman had relayed to him, and he said he didn't have to follow those instructions, that he was the oldest man, he didn't have to do that."

In the investigation the Claimant denied drinking on Company property. He admitted drinking in his automobile as he was leaving the property, but contended that it was not on Carrier's property. He also denied refusing to comply with instructions concerning the cooking and delivery of food to the men in the field, but simply said that he would get the matter clarified.

There were various conflicts in the investigation as between Claimant's statement and the statements of others; however, it is well settled that this Board does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the hearing officer.

Claimant's prior record, which has been made a part of the record, is far from satisfactory. It shows a thirteen day suspension in 1971, a dismissal in 1972, re-entry to service in 1973 and a letter of warning for not protecting his assignment in 1974.

Based upon the entire record, the Board finds that Carrier's dismissal of Claimant was not arbitrary, capricious or in bad faith. There is no proper basis for this Board to interfere with the discipline imposed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March 1982.

